IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2845 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEHGAM TALUKA GRAM SWARAJ KENDRA - Petitioner(s)
Versus
GOVERNMENT OF GUJARAT 3RD SPECIAL LAND ACQUISITION & 5 - Respondent(s)

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Appearance :

MR GM AMIN for Petitioner(s) : 1,
MR MENGDEY, AGP for Respondent(s) : 1 - 6.
MS AVANI S MEHTA for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/11/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged a decision on part of the Government

to recover an amount of Rs.9,61,960/- towards maintenance grant of the petitioner for which order came to be passed on 31st January, 2000.

2. The petitioner runs an educational institution in the form of Uttar Buniyadi School. For the said purpose, the petitioner receives grant from Government as per the Government policy from time to time. The Government entered into correspondence with the petitioner suggesting that the petitioner is in receipt of maintenance grant in excess of its entitlement. The main plank of contention of the Government appears to be that the petitioner-school must have a minimum of 15 acres of land for receiving grant under different heads. Apparently, Government was of the opinion that if the petitioner did not have land to the said extent, grant paid to the petitioner between 1987 to 1990 totalling to Rs. 9,61,960/- is required to be recovered.

3. Learned advocate Shri Amin for the petitioner points out that as per the Government policy, requirement of maintaining the land by such institutes is 11 acres, if the land is irrigated land.

4. Be that as it may, in view of two decisions of this Court under similar circumstances, at this stage, it is not necessary for this Court to to into detailed examination of merits of rival

contentions.

5. Learned advocate Shri Amin points out that learned Single Judge of this Court in an order dated 28th July, 2000 passed in Special Civil Application No.6129/1990 and connected matters was pleased to come to the conclusion that under the rules, it is not necessary that the institution must own the land and the institution concerned would still qualify to receive grant if the institution possesses the land to the said extent. This Court in the said decision was thereafter, pleased to direct the authorities to reconsider all the cases in light of the observations and findings.

6. Learned advocate Shri Amin further points out that this view was followed in an order dated 20th December, 2001 passed in Special Civil Application No. 1494/1991.

7. Learned advocate Shri Amin additionally points out that in fact, the present petitioner-trust owns land to the extent of 17 acres and there is sufficient evidence on record to establish this fact.

8. Learned AGP Shri Mengdey appearing for the Government was unable to point out any material difference between the facts of the present case as compared to the above two decided cases.

9. Learned Single Judge of this Court while disposing of Special Civil Application No.6129/1990 by an order dated 28th July, 2000 while interpreting the term “should maintain 15 Acres of land” occurring in Rule 125 of the Grant in Aid Code, came to the conclusion that such expressions would include not only the land which is owned as well as maintained, but any other land which is so maintained when the school is in lawful possession. It was observed that “maintained” would obviously mean in the context the land which is lawfully maintained by the school but will not necessarily imply ownership thereof. It was observed that in fact, a land maybe owned by the school and yet not possessed if it is given over to some other body in which case there would not be any question of maintaining such land which is owned by not possessed for the purpose of teaching agriculture. On this conclusion, learned Judge was pleased to quash the Government action and to direct taking of fresh decision.

10. In the present case, the same ratio would apply and Government would have to undertake fresh exercise, if the petitioner trust fulfills the requirement of Rule 125 of the Grant in Aid Code as interpreted by this Court. Additionally, contention of the petitioner that the petitioner in fact owned and possessed the land to the required extent shall also be taken into

consideration.

11. In the result, the petition is allowed. The impugned order at Annexure-A is quashed. The respondents are directed to take a fresh decision bearing in mind the observations made here-in-above after giving an opportunity of being heard to the petitioners. The above exercise shall be completed expeditiously and preferably within a period of three months from the date of receipt of a copy of this order.

12. With these directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(raghu)